

... And Access to the Prisoners

JUST ABOUT a year and a half ago, Chief Justice Warren E. Burger, took the occasion of a speech in Philadelphia to address one of his favorite topics: the need for reform of the American prison system. He chided the society and its courts for ignoring the prisons and the fate of prisoners once they have been convicted and sentenced; these were his words:

We continue to brush under the rug the problems of those who are found guilty and subject to criminal sentence. In a very immature way, we seem to want to remove the problem from public consciousness. It is a melancholy truth that it has taken the tragic prison outbreaks of the past three years to focus widespread public attention on this problem.

We agree wholeheartedly with those sentiments. And that is why we disagree wholeheartedly with Chief Justice Burger and four of his colleagues in a decision the Supreme Court announced on Monday. The Court found, 5-4, that prison regulations barring interviews between reporters and inmates did not violate the constitutional guarantee of free speech and free press.

When Justice Burger pointed out that the prisons were far away from public consciousness, his observation coincided with that of several commissions, citizens groups and prison rights groups, all of whom have argued that one of the reasons for prison outbursts is the feeling among prisoners that they are locked away where no one can see what is happening to them. One of the reasons they riot is to forcibly call public attention to the shame of the prisons. It is one of the arguments of the prison reformers that great damage done to the prisoner is not only from society's inability to see in, as well as from the inmate's inability to see out.

It was against this background that a group of West Coast journalists and a Washington Post reporter, Ben H. Bagdikian, sued the California prison system and the U.S. Bureau of Prisons to end the practice of denying journalists the right to interview individual inmates with a specific story to tell. They argued that one of the best ways for the rest of the society to understand what was being done behind those walls in all our prisons would be for the press to be able to conduct face-to-face interviews. Furthermore, they argued, such

interviews should be the First Amendment right of the inmate and the press alike.

The Supreme Court, however, found that prisoners were not cut off from the public because they could always write letters to reporters and others, if they so chose. It held that the rights of the prison administrators had to be balanced against the rights of the prisoners and the press. It noted the policies of the two prison systems permitting reporters to tour the facilities and talk to prisoners at random—but often in the company of guards and other officials. The key phrase is “at random.” While the court recognized the value of the pre-arranged face-to-face interview arising out of some prior insights to a particular circumstance, it said this was not a value of overarching importance when balanced against the interests of the prison officials. And it said, finally, that the right of the press to scrutinize the prisons was no greater a right than that of the public, and that the public was not granted such access to the prisons.

And that is just the point. The public cannot regularly tour the prisons and interview inmates any more than the public could be expected to learn all it needs to know about Congress by attending all its hearings. It could not master the issues of the city council by going to all its deliberations. That is the role of the press—to obtain and convey that vital information required by a self-governing people if they are to make wise decisions.

Justice Lewis Powell, in a noteworthy dissent, reminded his colleagues of the vital issues at stake for the whole of the society in the prison decisions:

The people must depend on the press for information concerning public institutions. The . . . absolute prohibition of prisoner-press interviews negates the ability of the press to discharge that function and thereby substantially impairs the right of the people to a free flow of information and ideas on the conduct of their government. The underlying right is the right of the public generally. The press is the necessary representative of the public's interest . . . and the instrumentality which effects the public's right.

We can only add our hope that Justice Powell's moving and wise dissenting view will someday prevail.